

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6729

BILL NUMBER: HB 1005

NOTE PREPARED: Feb 23, 2012

BILL AMENDED: Feb 23, 2012

SUBJECT: Nepotism; Conflict of Interest.

FIRST AUTHOR: Rep. Mahan

FIRST SPONSOR: Sen. C. Lawson

BILL STATUS: 2nd Reading - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

Not a Lucrative Office- The bill specifies that the following are not lucrative offices: (1) Notary public. (2) Membership on a board administered by the Professional Licensing Agency.

Unit Employees Elected to Office- The bill provides that an employee of a county, city, town, or township (unit) is considered to have resigned from employment with the unit if the employee assumes the elected executive office of the unit or becomes an elected member of the unit's legislative or fiscal body.

Firefighters- The bill provides that a full-time paid firefighter or volunteer firefighter may not assume or hold a position on the executive, legislative, or fiscal body of a unit that receives fire protection services from the department in which the volunteer firefighter serves. The bill specifies that the restriction does not prevent an elected officer from serving on a board, commission, or committee of the unit. The bill provides that the restriction does not prohibit an employee (including a full-time paid firefighter) or volunteer firefighter from holding an elected office of another unit.

Unit Employment and Expiration of Term of Office- The bill allows an employee (including a full-time paid firefighter) or a volunteer firefighter who assumes or holds an elected office on January 1, 2013, to continue to hold the office and be employed by the unit or serve as a volunteer firefighter until the expiration of the term of office.

Employee Related to Supervisor- The bill provides that relatives may not be employed by a unit in positions

that result in one relative being in the direct line of supervision of the other relative.

Break In Employment- The bill provides that an individual who is employed by a unit on July 1, 2012, is not subject to the provisions regarding nepotism unless the individual has a break in employment with the unit.

Not Considered Employment with Unit- The bill provides that for purposes of the nepotism law, the performance of the duties of a precinct election officer or a volunteer firefighter is not considered employment by a unit.

Other Miscellaneous Provisions- The bill provides that an individual who is employed by a unit on the date the individual's relative begins serving a term of an elected office of the unit: (1) may remain employed by the unit and maintain the individual's position or rank even if the individual would be in the direct line of supervision of the individual's relative; and (2) may not be promoted to a position or, in the case of an individual who is a member of a merit police department or merit fire department, promoted to a position that is not within the merit ranks, if the new position would place the individual in the direct line of supervision of the individual's relative.

Additional Exceptions- The bill makes the following additional exceptions: (1) Allows a township trustee whose office is located in the trustee's personal residence to employ only one relative to work in the township trustee's office and be in the trustee's line of supervision. (2) Allows a coroner who is ineligible for another term of office due to term limits to be hired by the coroner's successor, even though the successor is a relative and will result in the coroner working in the successor's direct line of supervision. (3) Allows a sheriff to hire the sheriff's spouse as prison matron for the county and work in the sheriff's direct line of supervision. The bill limits the total compensation of the township trustee's employed relative to \$5,000 per year.

Nepotism and Position Contracts- The bill provides that provisions concerning nepotism apply to a person who is a party to an employment contract with a unit.

Policy Complying with Nepotism and Contracting Law- The bill requires a unit to implement a policy under the nepotism and contracting provisions. The bill allows a unit to implement a policy that is more stringent and detailed.

Compliance in Writing- The bill requires each elected official of the unit to annually certify in writing, subject to the penalties for perjury, that the official is in compliance with the nepotism and contracting law and to submit the certification to the executive of the local unit. The bill requires the executive of the local unit to file with the annual personnel report filed with the State Board of Accounts (SBOA) a statement regarding whether the unit has implemented a policy under the nepotism law and contracting provisions.

Unit Contracts with Relatives of Elected Officials- The bill provides that a unit can enter into or renew: (1) a contract for the procurement of goods and services; or (2) a contract for public works; with a relative of an elected official or a business entity in which a relative has an ownership interest if the elected official does not violate the criminal conflict of interest statute and the elected official makes full, written disclosure and satisfies any other requirements of the public purchasing law or the public works law.

Effective Date: (Amended) July 1, 2012; January 1, 2013.

Explanation of State Expenditures: *Compliance in Writing-* Any unit elected officer that falsifies a

nepotism/contract compliance report to the State Board of Accounts (SBOA) would commit perjury, a Class D felony.

Penalty Provision: A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: *Compliance in Writing/Penalty Provision:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from criminal fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenues would likely be small.

Explanation of Local Expenditures: *Compliance in Writing-* A local unit failing to file a statement with the SBOA confirming adoption of a policy regarding the nepotism requirements of the bill would not have their budget nor any additional appropriations approved by the Department of Local Government Finance in the following year until notified by the SBOA that compliance has occurred. Any impact on local unit expenditures would depend on the amount of time a local unit was not in compliance.

Unit Contracts with Relatives of Elected Officials- These provisions would have an indeterminable effect on contract employment or procurement of goods and services within a local unit of government. In order to enter or renew a contract with a relative of an elected official of the unit, the official must file with the unit in writing a description of the contract or purchase made by the unit. The official would also have to describe the relationship with the person or entity being contracted with and be accepted by the legislative body of the unit in a public meeting. The written description would also have to be filed with the SBOA and the county clerk's office.

Compliance in Writing/Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

Explanation of Local Revenues: *Compliance in Writing/Penalty Provision-* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, the amounts would likely be small.

State Agencies Affected: Department of Correction; State Board of Accounts; Department of Local Government Finance.

Local Agencies Affected: All.

Information Sources:

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